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SENATE

REPORT
101-289

ENERGY POLICY AND CONSERVATION ACT AMENDMENTS OF 1990

MAY 15 (legislative day, APRIL 18), 1990.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

(To accompany S. 2088)

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2088) to amend the Energy Policy and Conservation Act to extend the authority for titles I and II, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

That this Act may be referred to as the "Energy Policy and Conservation Act Amendments of 1990".

SEC. 2. EXTENSION OF AUTHORITY.

The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) is amended—

(a) in section 104(b)(1) by striking out "August 15, 1990" and inserting in lieu thereof "September 30, 1993";

(b) in section 171, by striking out "August 15, 1990" each place it appears and inserting in lieu thereof "September 30, 1993"; and

(c) in section 281, by striking out the term "August 15, 1990" each place it appears and inserting in lieu thereof "September 30, 1993".

SEC. 3. ENLARGEMENT OF SPR TO ONE BILLION BARRELS.

(a) Section 159 of the Energy Policy and Conservation Act (Public Law 94-163), as amended (42 U.S.C. 6239), is amended by adding the following new subsections:

S313-12

"(i) No later than eighteen months after enactment of the Energy Policy and Conservation Act Amendments of 1990, the Secretary shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of negotiations undertaken pursuant to Part C. The report shall—

"(1) describe the terms of any contracts negotiated pursuant to Part C and any cost savings that would result from such contracts relative to the costs of acquisition pursuant to Part B.

"(2) give estimates, or ranges of estimates, of any cost savings that would likely result from additional contracts that could be negotiated pursuant to Part C for completion of the storage of one billion barrels of petroleum products in the Reserve relative to the costs of acquisition pursuant to Part B.

"(j) No later than twenty-four months after enactment of the Energy Policy and Conservation Act Amendments of 1990, the Secretary shall amend the Strategic Petroleum Reserve Plan to prescribe plans for completion of storage of one billion barrels of petroleum products in the Reserve. Such amendment shall comply with the provisions of Section 159 and shall detail the Secretary's plans for the design, construction, leasing and other acquisition, and fill of storage and related facilities of the Reserve to achieve such one billion barrels of storage. Such amendment shall not be subject to the congressional review procedures contained in section 551. In assessing alternatives in the development of such plans, the Secretary shall consider leasing privately owned storage facilities."

(b) Section 160 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6240), is amended—

(1) by substituting in paragraph (c)(3)—

(A) the term "fiscal year 1993" for the term "fiscal years 1988 and 1989", and

(B) the term "1,000,000,000" for the term "at least 750,000,000", and

(2) in paragraph (d)(1)—

(A) by substituting in subparagraph (A) the term "1,000,000,000" for the term "750,000,000", and

(B) by inserting before the period at the end of subparagraph (B) the words "and the Secretary has amended the Strategic Petroleum Reserve Plan as required by section 159(j)".

SEC. 4. PREDRAWDOWN DIVERSION OF SPR OIL.

(a) Section 161 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6241), is amended by adding the following new subsection:

"(h)(1) If the President finds that a severe energy supply interruption may be imminent, then the execution of new contracts for petroleum products for injection into the Strategic Petroleum Reserve may be curtailed or suspended for a period not to exceed thirty days, and the provisions of sections 160(c) and (d) shall not apply: *Provided, however,* That the President may extend such finding for additional thirty-day periods if he finds that the conditions that justified the initial finding still exist.

"(2) The period during which such Presidential finding is in effect, and the quantity of any petroleum products involved, shall be disregarded in applying the provisions of such subsections for periods following the effective period of such finding.

"(3) When such a finding is in effect, the Secretary is authorized to sell, in accordance with rules or regulations which he shall promulgate, and petroleum products acquired for storage in, but not injected into, the Strategic Petroleum Reserve."

(b) Section 167(b)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6247(b)(3)) is amended by inserting a comma and the words "and from the sale of petroleum products under section 161(h)" before the period at the end of the section.

(c) Section 167(d) of the Energy Policy and Conservation Act (42 U.S.C. 6247(d)) is amended by inserting a comma and the words "and from the sale of petroleum products under section 161(h)" after the words "such section".

SEC. 5. LEASING AUTHORITY.

Title I of the Energy Policy and Conservation Act is amended by adding the following new part after Part B and redesignating parts accordingly.

"PART C—SUPPLEMENTAL OIL RESERVE

"DECLARATION OF POLICY

"SEC. 171. (a) The Congress finds that budgetary constraints have hindered completion of a one billion barrel Strategic Petroleum Reserve, and that establishment

of a Supplementary Oil Reserve can help diminish the vulnerability of the United States to the effects of a severe energy supply interruption, and contribute to the effectiveness of the international energy program.

"(b)(1) It is hereby declared to be the policy of the United States, to the extent consistent with the Strategic Petroleum Reserve program, to encourage supplementation of the Strategic Petroleum Reserve and other domestic petroleum product stocks by contracting for Supplementary Oil Reserve storage of petroleum products in, or readily accessible to, the United States by private firms or foreign governments in facilities not owned by the United States, and by contracting for Supplementary Oil Reserve storage in Government-owned facilities.

"(2) The purpose of this part is to add to the Secretary's existing authority under Part B to contract for petroleum products and storage and related facilities for the Strategic Petroleum Reserve by authorizing the Secretary to contract for Supplementary Oil Reserve storage in facilities other than those of the Strategic Petroleum Reserve, and for Supplementary Oil Reserve storage, in otherwise unused Strategic Petroleum Reserve storage facilities, of petroleum products owned by any person or government.

"(3) It is the policy of the United States that the authorities provided by this part shall be used as a complement to the Strategic Petroleum Reserve and not in any manner which reduces the effectiveness of, or diminishes the control of the President and the Secretary over, the drawdown or distribution of the Strategic Petroleum Reserve.

"DEFINITIONS

"SEC. 172. Terms used in this part have the same meaning that they have in Part B.

"CONTRACTING FOR PETROLEUM PRODUCTS AND FACILITIES

"SEC. 173. (a) The Secretary may contract for Supplementary Oil Reserve storage, in storage facilities other than those of the Strategic Petroleum Reserve, of petroleum products not owned by the United States.

"(b) Petroleum products stored under such a contract are subject to the Secretary's authority under section 161 (except sections 161(e) and (g)) to draw down and distribute petroleum products, as if those petroleum products were in the Strategic Petroleum Reserve.

"USE OF STRATEGIC PETROLEUM RESERVE FACILITIES

"SEC. 174. (a) The Secretary may contract for Supplementary Oil Reserve storage, in otherwise unused Strategic Petroleum Reserve facilities, of petroleum products not owned by the United States, to the extent consistent with the purposes of Part B and of this part. A contract entered into under this section shall not limit the discretion of the President or the Secretary to conduct a drawdown and distribution of the Strategic Petroleum Reserve.

"(b) Petroleum products stored under any such contract are subject to the authority of the Secretary under section 161 (except sections 161(e) and (g)) to draw down and distribute petroleum products, as if those petroleum products were in the Strategic Petroleum Reserve.

"(c) The Secretary may store petroleum products under this section with or without charge, or pay a fee for their storage.

"STRATEGIC PETROLEUM RESERVE TIE-IN

"SEC. 175. (a) If the Secretary determines that one or more contracts or proposed contracts for Supplementary Oil Reserve storage of petroleum products under section 173 or 174 would for their duration achieve benefits comparable to equivalent storage of petroleum products in the Strategic Petroleum Reserve and that, because of budgetary constraints, equivalent storage of petroleum products in the Strategic Petroleum Reserve cannot be accomplished, the Secretary may so notify each House of the Congress, including in his notification the same information required under section 154(e) with regard to storage and related facilities proposed to be included, or petroleum products proposed to be stored, in the Strategic Petroleum Reserve. From sixty calendar days after notification, all petroleum products actually stored under such a contract shall be counted as part of the Strategic Petroleum Reserve for purposes of Part B.

"(b) Petroleum products counted as part of the Strategic Petroleum Reserve under this section, if otherwise eligible, qualify to satisfy any applicable provisions for Regional Petroleum Reserves or noncontinuous storage under Part B.

"(c) Notwithstanding any other law, the expiration of a contract for the storage of petroleum products under section 173 or 174 is not a violation of any requirement concerning the size or rate of fill of the Strategic Petroleum Reserve. For purposes of section 160(d), the reduction in the quantity of crude oil in storage in the Strategic Petroleum Reserve attributable to expiration of such a contract is considered to occur between the end of the fiscal year in which expiration actually occurs and the beginning of the following fiscal year.

"IMPLEMENTATION

"SEC. 176. (a) Notwithstanding subsection 160(c), the Secretary may use, for the acquisition of petroleum products or of petroleum product storage under this Part, without further appropriation, funds available for the planning, administration, acquisition, and construction of storage and related facilities of the Strategic Petroleum Reserve, and funds available for the acquisition, transportation, and injection of petroleum products into the Strategic Petroleum Reserve. For the purposes of this section, the acquisition of petroleum products includes payments of amounts due upon the expiration, termination or other conclusion of the acquisition contract.

"(b) The Secretary, in any contract entered into under this part, may provide for the acquisition by purchase or exchange of stored petroleum products by the United States, for storage in, or use in connection with, a drawdown and distribution of petroleum products from the Strategic Petroleum Reserve.

"(c) An amendment of the Strategic Petroleum Reserve Plan is not required for any action taken under this part.

"(d) Petroleum products stored and facilities used in the Supplementary Oil Reserve have the same status as petroleum products and facilities owned by the United States for all purposes associated with the exercise of the laws of any State or political subdivision thereof.

"(e) Contracts under this part may be of such duration as the Secretary considers necessary or appropriate.

"(f) For purposes of any law or regulation affecting the solicitation, negotiation, execution or performance of contracts, contractual action pursuant to this Part need not comply with applicable laws and regulations (other than those directly relating to safety, health or the environment) governing the construction of facilities, or the acquisition or provision of services or property.

"(g) Upon the expiration, termination or other conclusion of a contract with a foreign government or agency thereof entered into under section 173 or 174, the President, notwithstanding any other law, may permit export of crude oil which has been stored pursuant to such contract.

"(h) The Secretary may agree to binding arbitration of disputes under any contract, including a contract with a foreign government or agency thereof, entered into pursuant to section 173 or 174.

"(i) Section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply to a bill submitted by the President in implementation of an international agreement or other agreement negotiated in fulfillment of this Part, as if the international agreement or other agreement were an agreement approved under section 2(a) of that Act when the President determines that it is necessary or appropriate to amend, repeal or enact a statute of the United States to implement a requirement of, or amendment to, the international agreement or other agreement."

SEC. 6. EXEMPTION FROM INTERSTATE COMMERCE ACT.

Section 159 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6239), is amended by adding the following new subsection:

"(k) A storage or related facility of the Strategic Petroleum Reserve owned by or leased to the United States is not subject to the Interstate Commerce Act."

SEC. 7. AUTHORITY TO ALLOW EXCHANGE OF SPR OIL.

Section 161 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6241), is amended by adding the following new subsection:

"(h) Notwithstanding any other law, the President may permit any petroleum products withdrawn from the Strategic Petroleum Reserve in accordance with this section to be sold and delivered for refining or exchange outside of the United States, in connection with an arrangement for the delivery of refined petroleum products to the United States."

SEC. 8. CONFORMING AMENDMENTS.

The Energy Policy and Conservation Act is amended by inserting in the table of contents at the end of Title I—Matters Related to Domestic Supply Availability, the following items:

"PART C—SUPPLEMENTARY OIL RESERVE

"Sec. 171. Declaration of Policy.
"Sec. 172. Definitions.
"Sec. 173. Contracting for Petroleum Products and Facilities.
"Sec. 174. Use of Strategic Petroleum Reserve Facilities.
"Sec. 175. Strategic Petroleum Reserve Tie-in.
"Sec. 176. Implementation.".

PURPOSE OF THE MEASURE

The purpose of S. 2088 as reported by the Committee is to amend the Energy Policy and Conservation Act (EPCA) to extend the authority for titles I and II, and for other purposes.

SUMMARY

S. 2088 as reported:

1. Extends for 3 years Titles I and II of the Energy Policy and Conservation Act.

2. Expands the Strategic Petroleum Reserve (SPR) from 750 million to the 1976 statutory goal of 1 billion barrels.

3. Allows the "leasing" of oil and related facilities for the SPR.

4. Allows oil en-route for SPR storage to be sold without an SPR drawdown decision if a disruption is imminent.

5. Allows export of SPR oil for refining or exchange in the Caribbean or elsewhere.

BACKGROUND AND NEED

Extension of EPCA Authority.—Titles I and II of EPCA deal with the United States authority to respond to energy supply emergencies. Title I provides authority for operating, building, and drawing down the Strategic Petroleum Reserve, and deals with other matters related to domestic energy supply during a disruption.

Title II pertains to energy emergencies and preparedness; it authorizes U.S. participation in the International Energy Program (IEP). Under S. 2088, this authority would be extended from the current expiration date of August 15, 1990, to September 30, 1993.

A Billion Barrel SPR.—Over 580 million barrels of oil are currently stored in the SPR. The original enabling legislation (EPCA) established as national policy the creation of an SPR "up to one million barrels". While the Senate has consistently supported this goal, no Administration ever submitted specific plans beyond a 750 million barrel Reserve. S. 2088 directs DOE to amend the SPR Plan to reflect implementation of the 1976 goal of one million barrels. The Senate passed legislation with this same directive in 1989 (S. 694).

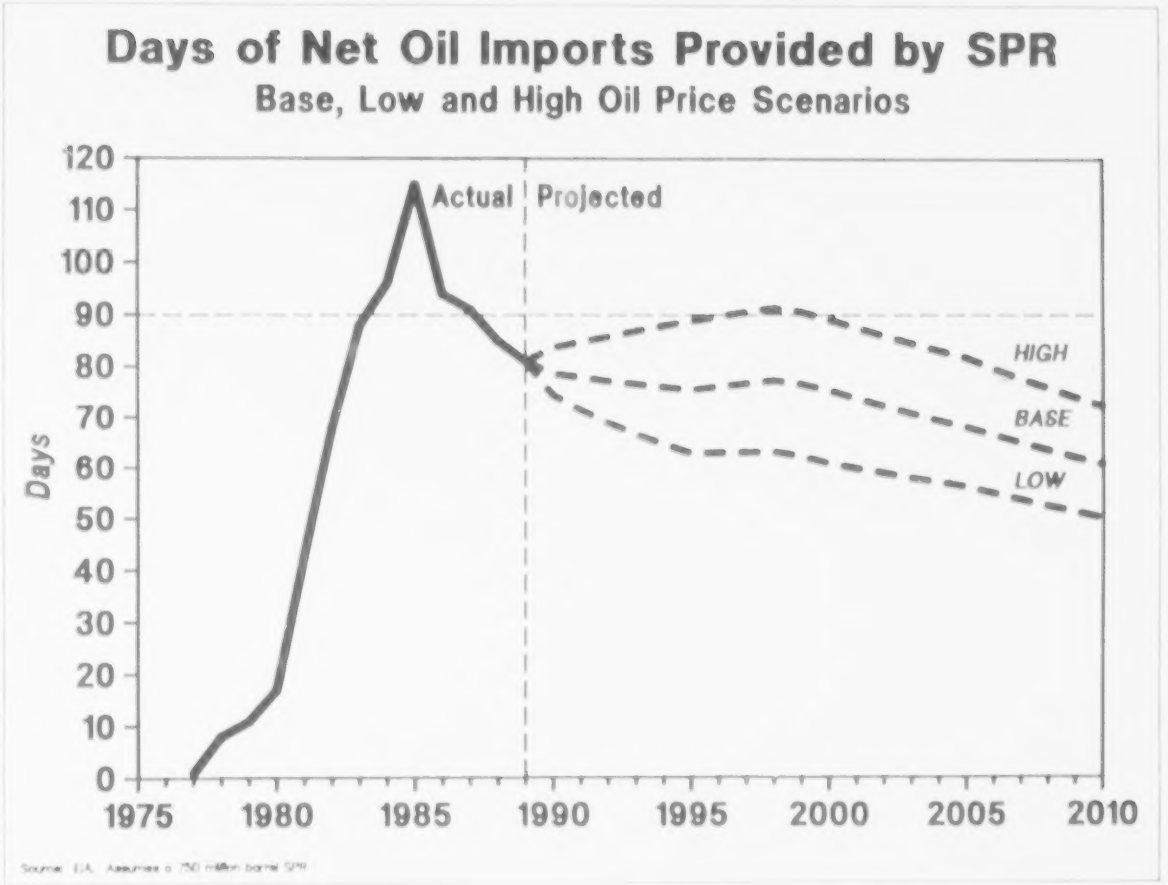
There are two basic approaches to thinking about the appropriate size of the SPR: (1) applying the policy judgment that the SPR should be able to supply at least 90 days of net oil imports, and (2) applying cost-benefit analysis to the question.

Chairman Johnston and others, including Donald P. Hodel when he was Energy Secretary, have advocated that the SPR should con-

tain at least 90 days of net U.S. oil imports.[1] A Reserve of 750 million barrels will cover 90 days of supply only if oil imports do not exceed 8.3 million barrels. In its latest base case forecast, the Energy Information Administration (EIA) projects that imports will greatly exceed that level by 1995, approaching 9.1 million barrels per day. Even in EIA's high oil price scenario, in which oil consumption is held relatively low, imports would be greater than 8.3 million barrels a day by the year 2000.

The following chart displays the size of the SPR expressed as the number of days of imports in the Reserve. As the chart illustrates, the SPR has been shrinking for the past four years in terms of the "days of net oil imports" it could provide (though it is growing, of course, in absolute volume). Current volume is about 580 million barrels which provides less than 80 days of imports.

[1] The U.S. is party to the international energy agreement establishing the IEP that requires each nation to maintain a minimum of 90 days of imports in government-controlled reserves (public and private). The U.S. currently meets this requirement. The policy question is the degree to which the U.S. should maintain oil reserves in excess of minimum IEP requirements in the face of rapidly rising oil imports. The Senate has consistently supported the maintenance of 90 days of imports in the SPR alone.


Days of Net Oil Imports Provided by SPR
Base, Low and High Oil Price Scenarios
Days
120
110
100
90
80
70
60
50
40
30
20
10
0
1975
1980
1985
1990
1995
2000
2005
2010
Actual
Projected
HIGH
BASE
LOW

The chart projects that the "days of imports" will consistently decline in the Base and Low oil price scenarios, reaching 50 to 60 days by 2010. In the High price scenario (in which oil imports increase more gradually), the "days of imports" climbs briefly to 90 days and then declines. These projections assume the present maximum size of the SPR (750 million barrels) and a fill rate of 50,000 barrels per day.

Cost-benefit analysis is the second approach to the question of Reserve size. Applied to the SPR, such analysis attempts to quantify the major costs of creating an oil stockpile, including the cost of acquiring the oil and the cost of building and maintaining facilities. The important benefits quantified are:

—the Reserves are a Federal asset, hence the Government receives the revenue from sale of the oil during a disruption in oil supplies;

—oil price increases are dampened not only during a supply disruption but when it is perceived that a disruption could be imminent, as during recent hostilities between Iraq and Iran;

—reduced economic impact on GNP and employment during a disruption;

—a reduced chance of a disruption due to the existence of the SPR.

A typical cost-benefit analysis examines many plausable scenarios in which disruptions of various sizes and durations occur in various years. In some scenarios, the cost of the SPR exceeds the benefits (e.g., if no disruption occurs). In other scenarios, the benefit of the SPR exceeds the cost to the economy by billions of dollars (e.g., a large, prolonged disruption). Each scenario is weighted by the probability of that scenario occurring and the benefits and costs are summed up on a "probability-weighted" or "expected" basis.[2]

Needless to say, this analysis cannot be undertaken with any precision. The benefits calculated are dependent on assumptions concerning probabilities, disruption sizes, price movements during disruptions, etc., none of which the analyst can know with certainty.

In sharp contrast with the position of current law and the Senate's position, in February 1990 the Administration released a cost-benefit analysis conducted by the Interagency Working Group on SPR Size. Unlike the previous analyses discussed below, this analysis concluded that the costs of expansion to one billion barrels exceeded the benefits. The same report concluded that it was not even cost-effective to fill the increment of the SPR from 600 to 750 million barrels.[3] Nevertheless, the final recommendation was to meet the current target of 750 million barrels.

By comparison, other assessments of the costs and benefits of expanding the SPR, such as a 1988 study by the Oak Ridge National Laboratory, conclude that an expansion from 750 million barrels to 1 billion barrels would provide expected net benefits of several billion dollars. A 1982 DOE study also supported an ultimate size of 1

[2] For example, if there are two scenarios, one with a benefit of $20 and a probability of 30%, and the second with a benefit of zero and a probability of 70%, the expected benefit is $6.

[3] Sensitivity analysis of expansion to both 750 million and one billion barrels indicated that under some sets of assumptions, the expansion was cost-effective, but under DOE's "mid-range" assumptions, the costs of expanding beyond 600 million barrels were greater than the benefits.

billion barrels. Some academic researchers such as William Hogan and Thomas Teisberg have also concluded that an SPR of at least a 1 billion barrels worth the investment.

The Interagency Working Group's analysis thus came under strong attack during the Committee hearing on S. 2088. Dr. Philip Verleger, an oil economist with the Institute for International Economics, criticized the analysis on several grounds. The analysis assumed that oil stockpiles and excess capacity would quickly and smoothly make up for disruptions of up to 20 percent of world oil supplies and no price impact would result. Dr. Verleger argued that this is a unrealistic view of how the oil market would work in the event of a disruption. Second, he argued that the U.S. should not assume that countries with excess capacity during a disruption will necessarily use all of that capacity to increase oil supplies. Finally, Dr. Verleger noted the fact that oil has become a widely traded commodity whose price is very vulnerable to shifts in psychology as well as minor changes in demand and supply. This increases the likelihood that small disruptions would lead to large price increases.

It is also worth emphasizing that the application of cost-benefit analysis to SPR size involves questions of the risks of a supply disruptions and insurance against such risks. The price the nation should pay to insure against potentially huge economic losses depends in part on the nation's attitude toward these risks. The judgment of the Congress is that the nation should insure against such risk. The debate over SPR size is a debate over the amount of insurance and whether the nation should reduce its risks by paying a higher insurance premium.

Oil Leasing.—Oil "leasing" is a promising "alternative financing method" for filling the SPR. Under current budgetary constraints, leasing may allow a faster fill rate than what would be possible by exclusive reliance on outright purchases of oil, and may be less costly as well. Conceivably, storage facilities could be leased as well.

The most common vision of leasing would involve the U.S. paying a fee for leased oil that the Federal government would control as part of the SPR. The leased oil would be stored in SPR facilities or in other facilities leased to, and located in, the U.S. The Federal government would have absolute control over *when* the leased oil is drawn down and sold. At the end of the lease, the lease could be renewed or the oil (or its equivalent) could be returned. If the oil were drawdown and sold in a disruption, some or all of the revenue could be divided between the Federal government and the owner depending on the specific lease terms. Regardless of the division of the revenue, because the leased oil is part of the SPR, the same beneficial effects, such as dampening the price spike during a disruption, would be available to the United States.

Oil leasing is likely to create budget scorekeeping savings. Currently, SPR appropriations are treated the same as any other budgetary outlay even though the oil purchased is an asset. In the ongoing debate over budgetary treatment of asset purchases versus operating expenses, the SPR stands out as one of the best examples of a purchase that is treated by the government as an ordinary expense but should be treated as the acquisition of a non-depreciating

asset. Oil leasing is a method that would spread payments over time and thus reduce outlays in the initial year, although cumulative budget authority could be comparable.

Oil leasing also offers the possibility of real economic cost savings. Consider the case of an OPEC producer that cannot sell more oil without violating its quota. The U.S. should be able to negotiate a very low payment for oil leased from such a producer.

On February 1, 1990, DOE transmitted a study of alternative financing methods to Congress as required in 1989 by Public Law 101-46. In his accompanying letter, Secretary Watkins recommended that Congress authorize, but not require, oil leasing. In the Committee's hearing on S. 2088, the Department offered recommended language to authorize the long-term leasing of crude oil and storage facilities. S. 2088 incorporates much of this recommended language.

The question of when oil stored in the SPR can be drawn down and distributed is central to the operation of the SPR program. The Congress, in enacting the EPCA, made clear the very limited circumstances under which oil withdrawals from the SPR were allowed. The Stringency of the drawdown restriction was emphasized when the Congress had to enact the Energy Policy and Conservation Amendments Act of 1985 (P.L. 99-48), in order to authorize an actual SPR test sale. The prohibition in EPCA on drawdown in non-emergency periods was viewed as precluding such an exercise.

Amendments to permit the potential withdrawal of leased oil are not readily inserted into the SPR's statutory charter in Title I, Part B of the EPCA, without altering the SPR's fundamental character. Therefore, section 5 of S. 2088 adds a new Part C to Title I of the EPCA (with the existing Part C being redesignated), authorizing a "Supplementary Oil Reserve" program.

The Committee expects the Administration to keep the Congress informed with respect to any leasing contracts. Any contracts are subject to the availability of appropriated funds. The authorization and appropriation process thus provides an important means for oversight. Congress expects to be kept informed of contract negotiations through the quarterly report on SPR oil and facilities acquisition. If a contract requires further legislative changes, S. 2088 allows for limited "fast-track" legislative treatment of a bill to implement a particular contract agreement.

Predrawdown diversion of SPR oil.—SPR oil purchases and deliveries can take place at any time. If an energy supply problem began to develop, oil destined for the SPR might be on board ships en route to SPR sites, stored in transshipment facilities in the Caribbean or elsewhere; or scheduled for lifting under oil supply contracts. Under such circumstances, it might be desirable to divert this incoming oil from SPR storage into the market. DOE presently lacks authority to resell SPR oil, except following a Presidential drawdown decision based on the existence of a "severe energy supply interruption," or a need to meet U.S. obligations under the International Energy Agreement. However, absent a Presidential decision to draw down the SPR, authority for diverting contracted for SPR oil into the domestic market rather than continuing to place it in SPR storage is quite limited.

Section 4 of S. 2088 allows incoming SPR oil to be sold without a drawdown decision, if the President finds that a severe energy supply interruption may be imminent.

Authority to Allow Export of SPR Oil for Refining.—The export of oil stored in the SPR is governed by the Department of Commerce "Short Supply Controls," 15 C.F.R. Part 777, which reflect various export restrictions that are imposed by law. These regulations would permit the export of imported oil only under extremely limited circumstances. Even more important, there are somewhat more stringent, independent statutory tests to be met as preconditions to the export of certain domestic crude oils stored in the SPR, including Alaska North Slope (ANS) and Naval Petroleum Reserves (NPR) oil. A complicating factor with respect to the SPR is that domestic and foreign oils subject to disparate export criteria, imposed under several different laws, are commingled with other crude oil in SPR storage. Thus, it will be difficult for a buyer to know, or for DOE to tell the buyer, which export control laws the crude oil he is buying is subject to. Even if DOE were able to do so, these significant legal obstacles would apply to much of the oil contained in the SPR.

S. 2088 provides the President discretionary authority to waive the export control laws with regard to SPR oil for the limited purpose of obtaining refined product for the U.S. market. It could prove desirable during an oil supply disruption to ship SPR oil to Caribbean refineries outside the United States and its territories, or to other foreign destinations, in order to exchange it for refined products or to refine it under a processing agreement, with the resulting products brought to the United States.

Regional Reserves.—EPCA provides the Department of Energy discretionary authority to establish Regional Petroleum Reserves (RPR's) when energy security considerations warrant them, but to date DOE has never advocated nor the Congress appropriated funds for their creation.

DOE argues that a Regional Petroleum Reserve would be very expensive—perhaps 50 percent more costly than the SPR on a dollars per barrel basis. The Department also argues that because crude oil is fungible, a fairly flexible oil distribution system and the price mechanism will ensure that adequate supplies flow to all regions of the United States.

Senator Inouye testified in favor of an RPR in Hawaii at the Committee hearing on S. 2088. The late Senate Matsunaga gave similar testimony last year when the Committee considered S. 694 in 1989. Hawaii's Senators have argued that the State is especially vulnerable to oil supply disruptions, being dependent on oil for 90 percent of its total energy supply, and by 1994 that oil will be entirely imported oil. Hawaii also argues that transportation to the State is slow and costly and there may not be an adequate tanker fleet for delivering oil in a disruption. However, the Committee continues to support the Administration's position that a centrally located SPR facilities provide adequate protection for all regions.

Legislative History

S. 2088 was introduced by Senators Johnston and McClure on February 7, 1990. For the most part, the measure contained provisions endorsed in 1989 by the Senate in passage of S. 694 but deferred at the request of the House pending a report from the Administration of crude oil leasing for the SPR. A hearing on the bill by the full Committee was held on March 20, 1990. At the business meeting on April 25, 1990, the Committee ordered S. 2088 favorably reported with an amendment in the nature of a substitute.

Committee Recommendations and Tabulation of Votes

The Committee, in open business session on April 25, 1990, by a majority vote of a quorum present, reported an amendment in the nature of a substitute and a Committee-recommended floor amendment, and recommended that the Senate pass S. 2088 and the amendment, as described herein.

The Committee-recommended floor amendment appears below:

In section 5(a) of S. 2088 insert the following subsection at the end of proposed new part C, section 176, subsection (h):

"(j) Notwithstanding any other law, the importation of petroleum products which the Secretary of Energy certifies are imported pursuant to contracts entered into under sections 173 or 174 shall not be subject to any duty, tax or fee."

The rollcall vote on reporting the measure was 15 yeas, 4 nays, as follows:

YEAS	NAYS
Johnston	Metzenbaum*
Bumpers*	Domenici
Ford	Nickles
Bradley*	McConnell
Bingaman*	
Wirth	
Conrad*	
Heflin*	
Rockefeller*	
McClure	
Hatfield	
Wallop	
Murkowski	
Burns	
Garn	

* Indicates vote by proxy

Section-by-Section Analysis

Section 2. Extension of Authority

Titles I and II of EPCA expire on August 15, 1990. Section 2 of S. 2088 would extend those authorities for approximately 3 years until September 30, 1993. Title I of EPCA contains some authorities and prohibitions unrelated to the SPR that are also controlled by this expiration date. S. 2088 would extend these existing authorities and prohibitions as well.

Section 3. Enlargement of SPR to One Billion Barrels

Section 3(a) would require the Secretary of Energy within 18 months of enactment to transmit a report to Congress on the Department's initial experience with oil leasing and its expectations on future leasing costs. Within 24 months of enactment, the Secretary must amend the Strategic Reserve Plan to prescribe plans for completion of the one-billion barrel Reserve authorized in 1976 by EPCA.

Section 160, paragraph (c)(3) of EPCA contains a provision (42 U.S.C. 6240(c)(3) that expired at the end of FY 1989, which states "....the President shall carry out petroleum acquisition, transportation, and injection activities at the highest practicable fill rate achievable, subject to the availability of appropriated funds." Section 3(b) of S. 2088 extends that provision until fiscal year 1993 or until one billion barrels are in storage.

Section 3(b) would continue the currrently mandated fill-rate of 75,000 barrels per day for the SPR until one billion barrels are in storage. Under current law, if that fill rate is not achieved, then the U.S. Government's share of oil from the Naval Petroleum Reserve at Elk Hills cannot be sold or otherwise disposed of, except to meet this SPR fill-rate. Congress has waived this required fill rate for some fiscal years when appropriations were insufficient to achieve it. S. 2088 would also extend the Elk Hills sanction if DOE does not amend the SPR Plan as required in Section 3(a) to provide for a one billion barrel SPR.

Section 4. Predrawdown Diversion of SPR Oil

Section 4 of S. 2088 allows incoming SPR oil to be diverted or released into the market place without a drawdown decision, if the President finds that a severe energy supply interruption may be imminent. SPR oil purchases and deliveries can take place at any time. If an energy supply problem began to develop, oil destined for the SPR might be on board ships *en route* to SPR sites; stored in transshipment facilities in the Caribbean or elsewhere; or scheduled for lifting under oil supply contracts. Under such circumstances, it might be desirable to divert this incoming oil from SPR storage into the market. DOE presently lacks authority to resell SPR oil, except following a Presidential drawdown decision based on the existence of a "severe energy suppy interruption," or a need to meet U.S. obligations under the International Energy Agreement. However, absent a Presidential decision to draw down the SPR, authority for diverting contracted for SPR oil into the domestic market rather than continuing to place it in SPR storage is quite limited.

Section 5. Leasing Authority

This section would create a new Part C in EPCA that authorizes crude oil and facilities leasing. The proposed new sections 171 through 176 of Part C are discussed below.

Section 171 would declare that it is U.S. policy, to the extent consistent with the SPR program, to encourage supplementation of the SPR and other domestic oil inventories with additional crude oil stocks leased from private firms or foreign governments—but not

in any manner which reduces the effectiveness of the SPR program or diminishes Executive Branch control over drawdown or distribution of SPR oil. Section 171 explains that, to this end, the new Part C would empower (but not require) the Secretary of Energy to "lease" oil, and to store it in either "leased" facilities or in otherwise unused SPR facilities.

Section 172 would extend the definitions used for the current Part B to Part C as added by S. 2088.

Sections 173 and 174 both would authorize the storage of oil owned by private firms or foreign governments in the SPR. The intent is to authorize such storage under lease, pursuant to options such as a conditional sale or on another contractual basis.

Section 173 also would authorize contracting for storage facilities expressly for the purposes of supplementary SPR oil storage; the intent is to permit leases, service contracts, or other arrangements. Section 173 also would permit the storage of leased privately-owned or foreign government-owned oil in leased or other non-Federal Government-owned facilities (such facilities might also store oil for commercial purposes).

By comparison, section 174 is directed at the storage of such leased oil in otherwise unused SPR facilities established under Part B. The facilities leasing authority in section 173 in no way derogates the Secretary's existing authority under Title I, Part B, to lease facilities for storage of government-owned SPR oil. Given the variety of types of arrangements that might be negotiated under section 174, the section recognizes that the Federal government might either pay or receive payment from the owner of "leased" oil, or permit storage of such oil in the SPR without charge. Under either circumstance, the oil stored is to be fully within the control of the Secretary and the President, and can only be drawn down and distributed in the same manner as government-owned SPR crude oil.

Section 175 contemplates the possibility that contracts entered into under authority of the new Part C might, for their duration, achieve benefits comparable to conventional SPR storage. If so, then following notification to that effect to the Congress by the Secretary of Energy, the supplementary storage achieved by methods such as leasing would be considered to satisfy the United States obligations for the storage of equivalent volumes of oil in the SPR.

Section 176 contains several provisions connected with implementation of supplementary leased storage. It would authorize the use of all funds in the SPR Petroleum Acquisition Account to carry out this Part, and eliminate any doubt that appropriations in the EPCA section 167 SPR Petroleum Acquisition Account could be used to return capital to a lessor at the end of a lease. It would waive any requirement to amend the SPR Plan in connection with crude oil or facilities "leasing," and clarify that the SPR Supplementary Oil Reserve, like the current SPR, would not be subject to State jurisdiction for certain purposes.

Because the contractual arrangement for SPR oil leasing may be bilateral and noncompetitive negotiations with oil producer countries, procurement laws and regulations would be waived. This is similar to the relief afforded from the procurement laws and regulations in the 1980 Energy Security Act (P.L. 96-294), when the

Congress authorized the use of Naval Petroleum Reserves oil for the SPR. Here, as there, DOE nonetheless is encouraged to abide by existing procurement laws and regulations to the extent consistent with the purposes of this Act. (*See* H.R. Conf. Rep. No. 96-1104, 96th Cong., 2d Sess. 318.)

Upon expiration of a leasing contract, existing U.S. laws and regulations with respect to oil exports could make it difficult for an owner of imported oil that was stored in the SPR Supplementary Oil Reserve to recover that oil. Therefore, the bill would authorize limited waiver by the President of the export control laws. This provision is patterned after the existing oil export control waiver for the Agreement on an International Energy Program and for the U.S.-Israel Supply Agreement, at section 7(d)(3) of the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2406(d)(3). As noted above, the oil returned to a "lessor" may not be the very same physical barrels delivered to the SPR; the intent of this provision thus is to allow the export of other physical Reserve barrels, with any quantity and quality adjustments that may be necessary to return oil essentially equivalent to that leased.

Another provision would permit binding arbitration of any disputes under oil "leasing" agreements with producer countries. Binding arbitration could be an appropriate means of dispute resolution for an oil storage contract with an oil producing country.

Finally, the proposed new EPCA subsection 176(i) would afford to legislation associated with international oil leasing agreements, the so-called "fast-track" treatment now enjoyed by certain trade legislation, including the recent U.S.-Canada Free-Trade Agreement. (*See* section 102(e) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law 100-449).

Under this "fast-track" legislation, the President would be authorized to submit to the Congress a bill to implement a government-to-government (or state oil company) oil leasing agreement, and each House of the Congress could act on that bill, without amendment, within a prescribed period of time. The bill could address Federal and state and local tax issues, and any other statutory issues arising out of the leasing negotiations. Of course, it is expected that before draft legislation is submitted to the Congress, the Executive Branch will consult with the jurisdictional Congressional committees. Even before that, it would be essential for the Executive Branch to consult closely with the Congress and keep the Congress fully informed of the status of bilateral, government-to-government negotiations that could result in the submission of draft legislation to Congress. The DOE acknowledged the need for such consultation in its February 2 report to the Congress on alternative SPR financing. *See* Volume I, page VI-108.

Section 6. Exemption from Interstate Commerce Act

The Committee and DOE perceive a need to clarify that the shipment of privately owned oil through SPR pipelines and other transportation facilities will not result in them being considered common carriers regulated under the Interstate Commerce Act. This is accomplished by adding a new EPCA section 159(i).

Section 7. Authority to Allow Exchange of SPR Oil

This section would provide the President discretionary authority to waive the export control laws with regard to SPR oil for the limited purpose of obtaining refined product for the U.S. market. It could prove desirable during an oil supply disruption to ship SPR oil to Caribbean refineries outside the U.S. and its territories, or to other foreign destinations, in order to exchange it for refined products or to refine it under a processing agreement, with the resulting products brought to the U.S.

Section 8. Conforming Amendments

The intent of this section is self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 3, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2088, the Energy Policy and Conservation Act Amendments of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2088.

2. Bill title: Energy Policy and Conservation Act Amendments of 1990.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, April 25, 1990.

4. Bill purpose: The bill extends the expiration of Titles I and II of the Energy Policy and Conservation Act of 1975 (EPCA), from August 15, 1990 to September 30, 1993. Title I of EPCA authorizes construction and oil acquisition for the Strategic Petroleum Reserve (SPR), and Title II authorizes U.S. government participation in oil emergency planning by the International Energy Agency (IEA).

The bill would require the Department of Energy (DOE) to develop plans for filling the SPR to a level of 1 billion barrels. Current plans call for a final fill level of 750 million barrels. Current plans call for a final fill level of 750 million barrels. Under S. 2088, DOE would have 24 months to amend the SPR plan.

S. 2088 would also authorize DOE to create a Supplementary Oil Reserve, and would provide DOE with the authority to lease facili-

ties and/or oil for the supplementary reserve. Several provisions would assist in implementing leasing arrangements:

(1) DOE could use any existing funds from prior appropriations for SPR management, acquisition, or construction for leasing, without further appropriations;

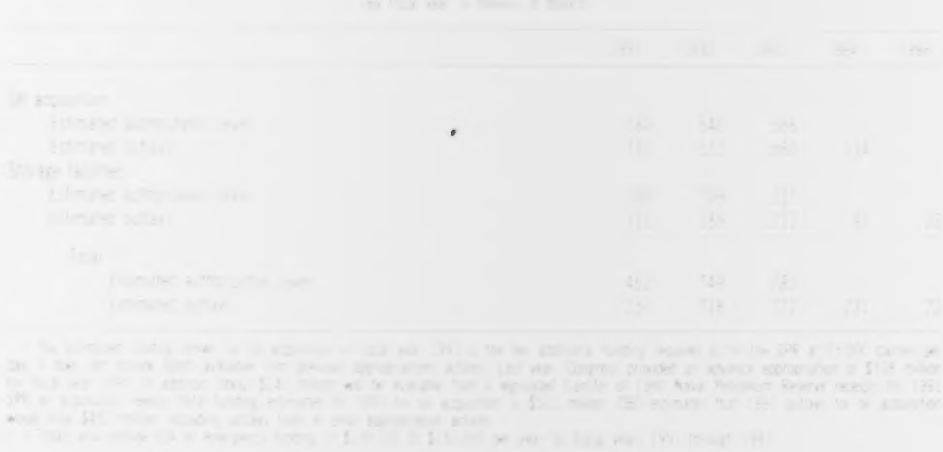
(2) the bill would waive procurement laws that might hinder oil leasing negotiations with foreign governments;

(3) the bill would also waive oil export-control laws to allow the return of leased oil at the end of a contract term;

(4) the Congress could use a technique that is currently used for trade agreements to expedite approval of a potential bill implementing a lease.

S. 2088 would further amend EPCA to allow the President, during an oil emergency, to curtail or suspend contracts for oil prior to its injection into the SPR.

5. Estimated cost to the Federal Government:



The costs of this bill fall within budget function 270.

Basis of estimate. The estimated authorization levels for SPR oil acquisition are the sums necessary to achieve the intended minimum fill rate of 75,000 barrels per day, based on CBO projections of the costs per barrel for oil that is purchased for the reserve. These estimates assume that the oil is purchased and thus do not reflect any potential budget impact for leasing oil. If DOE enters into a leasing arrangement, the budget impact for SPR oil acquisition could be either more or less than shown in the table above, depending on the amount of oil leased and the specific leasing terms negotiated by the U.S. government.

The estimates of authorization levels for SPR storage facilities—operation, maintenance, and new construction—are CBO's baseline projections for the 1991–1993 period, reflecting the 1990 appropriation adjusted for inflation. These amounts are almost entirely for operation and maintenance of storage facilities, as the Congress has already appropriated the funds necessary for construction of a 750 million-barrel reserve. Hence, the estimated authorization levels do not include any construction funds for expanding SPR capacity from 750 million barrels to 1 billion barrels, because the ad-

ditional capacity would not be needed for a number of years, the plans for any such expansion have not been developed, and some of the additional capacity could be obtained by leasing instead of new construction.

The SPR currently holds about 585 million barrels. At a fill rate of 75,000 barrels per day, the reserve would reach 750 million barrels in fiscal year 1996, and it would reach 1 billion barrels in fiscal year 2005, assuming sufficient funding for both oil acquisition and storage facilities.

Based on information provided by DOE, CBO estimates that continuing U.S. participation in oil emergency planning activities of the IEA will cost between $100,000 and $150,000 per year.

CBO assumes that all amounts authorized are appropriated and that all spending will occur at historical rates.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Pete Fontaine.

10. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2088. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2088, as reported.

Executive Communications

On February 1, 1990, Department of Energy transimitted a study of alternative financing methods to Congress as required by Public Law 101-46. On March 20, 1990, Assistant Secretary Robert H. Gentile testified at the full committee hearing on S. 2088.

On March 6, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of Energy and the Office of Management and Budget setting forth executive views on S. 2088. These reports had not been received at the time the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

MINORITY VIEWS OF MESSRS. NICKLES AND McCONNELL

There are many provisons of S. 2088 which have substantial merit. We agree that giving the Department of Energy authority to lease oil for the Strategic Petroleum Reserve is an innovative and helpful change. Until that new authority is tested in the oil markets, however, we will not be able to assess the types of contract terms that the markets will accept and what benefit those oil lease contracts might provide U.S. taxpayers in terms of lower lifetime costs for oil supply interruption "insurance".

At the present time, neither the Department of Energy nor the Congress have any certain knowledge how much less expensive the total costs of leasing will be as compared to purchasing the oil at the outset, as is the current practice. Moreover, we do not know whether the contracts will allow the U.S. Treasury to receive the benefit of any price escalation resulting from a sale of the oil during an emergency. Finally, we do not yet know whether leasing contracts will have the effect of obligating U.S. taxpayers to contracts with easy terms in the present in exchange for a multi-billion dollar "balloon" payment in ten (or more) years.

We do know that the committee's decision to authorize the expansion of the Strategic Petroleum Reserve to one billion barrels of petroleum will be expensive. Granted, in Fiscal Year 1991 and Fiscal Year 1992, the incremental costs for planning for building the Strategic Petroleum Reserve beyond 750 million barrels to one billion barrels will be only $14 million dollars. However, when construction begins in Fiscal Years 1993 through 1995, the bill will be $1.266 billion dollars, and another $60 to $80 million per year in incremental management costs thereafter, totaling $1.7 billion by 2006.

This $1.7 billion dollar investment does not include providing one additional drop of either purchased or leased oil. If the incremental 250 million barrels in purchased, the Department of Energy estimates it would cost an additional $11.8 billion. We do not believe that this $13.5 billion commitment is required at this time. A delay of one to two years to analyze the practical lessons of the Department's attempt to lease oil for the Strategic Petroleum Reserve will provide a more accurate accounting of the real budget impact and insurance benefits of the proposed expansion to one billion barrels using the leasing option(s).

In this connection, we fully support the amendments adopted by the committee to delay the deadline for the Department's amended Strategic Petroleum Reserve Plan until 24 months after enactment of this act in order to provide edequate opportunity to evaluate the Department's experiences with the oil leasing program. We look forward to the Energy Committee's review of the Department's preliminary report describing its experience with the leasing program, due eighteen months after enactment.

We fully support expanding the Strategic Petroleum Reserve, currently containing approximately 580 million barrels of crude oil, to the authroized limit of 750 million barrels. In 1996, when the Department of Energy anticipates it will complete the 750 million barrel fill requirement, the sustainable draw down rate is expected to be 4.5 million barrels per day. Thus, the Strategic Petroleum Reserve would be available to supply 4.5 million barrels —about one-half of expected 1996 net import levels—every day to the U.S. economy for five and one-half months. We believe that any additional "insurance protection" must be critically reviewed in the context of realistic cost estimates and federal spending priorities.

Given our lack of experience with the oil leasing program, the absence of any emergency need to obligate future taxpayers with significant construction and oil purchase or lease costs, and the uncertainties regarding the cost-effectiveness of providing import supply protection beyond the authorized 750 million barrel reserve, we oppose authorizing at this time the expansion of the Strategic Petroleum Reserve to one billion barrels.

DON NICKLES.
MITCH MCCONNELL.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2088, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE I, ENERGY POLICY AND CONSERVATION ACT

(Public Law 94-163, as amended)

* * * * * * *

MATERIAL ALLOCATION

SEC. 104.(a) * * *

(b)(1) The authority to issue any rules or orders under section 101(c) of the Defense Production Act of 1950, as amended by this act, shall expire at midnight [August 15, 1990], *September 30, 1993*, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to such date.

* * * * * * *

REVIEW BY CONGRESS AND IMPLEMENTATION

SEC. 159. * * *

(i) No later than 18 months after enactment of the Energy Policy and Conservation Act Amendments of 1990, the Secretary shall transmit to the Committree on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of

Representatives a report on the results of negotiations undertaken pursuant to Part C. The report shall—

(1) describe the terms of any contracts negotiated pursuant to Part C and any cost savings that would result from such contracts relative to the costs of acquisition pursuant to Part B.

(2) give estimates, or ranges of estimates, of any cost savings that would likely result from additional contracts that could be negotiated pursuant to Part C for completion of the storage of one billion barrels of petroleum products in the Reserve relative to the costs of acquisition pursuant to Part B.

(j) No later than 24 months after enactment of the Energy Policy and Conservation Act Amendments of 1990, the Secretary shall amend the Strategic Petroleum Reserve Plan to prescribe plans for complete of storage of one billion barrels of petroleum products in the Reserve. Such amendments shall comply with the provisions of Section 159 and shall detail the Secretary's plans for the design, construction, leasing or other acquisition, and fill of storage and related facilities of the Reserve to achieve such one billion barrels of storage. Such amendment shall not be subject to the congressional review procedures contained in section 551. In assessing alternatives in the development of such plans, the Secretary shall consider leasing privately owned storage facilities.

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PETROLEUM PRODUCTS FOR STORAGE IN THE RESERVE

SEC. 160. * * *

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(c)(3) Notwithstanding paragraph (2), beginning in fiscal year 1987 and continuing through [fiscal years 1988 and 1989] *fiscal year 1993* until the quantity of crude oil in storage within the Reserve is at least [750,000,000] *1,000,000,000* barrels, the President shall carry out petroleum acquisition, transportation, and injection activities at the highest practicable fill rate achievable, subject to the availability of appropriated funds.

(d)(1) Notwithstanding any other provisions of law, no portion of the United States share of crude oil in Naval Petroleum Reserve Numbered 1 (Elk Hills) may be sold or otherwise disposed of other than to the Strategic Petroleum Reserve (either directly or by exchange) during the fiscal year, except as provided in paragraph (2), unless—

(A) the quantity of crude oil in storage within the Strategic Petroleum Reserve is at least [750,000,000] *1,000,000,000* barrels; or

(B) acquisition, transportation, and injection activities for the Reserve are being undertaken for that fiscal year at a level sufficient to assure that crude oil in storage in the Strategic Petroleum Reserve will be increased at an average rate of at least 75,000 barrels per day for the fiscal year *and the Secretary gas amended the Strategic Petroleum Reserve Plan as required by section 159(j).*

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DRAWDOWN AND DISTRIBUTION OF THE RESERVE

SEC. 161. * * *

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(h)(1) If the President finds that a severe energy supply interruption may be imminent, then the execution of new contracts for petroleum products for injection into the Strategic Petroleum Reserve may be curtailed or suspended for a period not to exceed thirty days, and the provisions of sections 160 (c) and (d) shall not apply: Provided, however, That the President may extend such finding for additional thirty-day periods if he finds that the conditions that justified the initial finding still exist.

(2) The period during which such Presidential finding is in effect, and the quantity of any petroleum products involved, shall be disregarded in applying the provisions of such subsections for periods following the effective period of such finding.

(3) When such a finding is in effect, the Secretary is authorized to sell, in accordance with rules or regulations which he shall promulgate, any petroleum products acquired for storage in, but not injected into, the Strategic Petroleum Reserve.

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SPR PETROLEUM ACCOUNT

SEC. 167. * * *

(b)(3) in the case of any fiscal year, notwithstanding section 7270 of this title, in an aggregate amount equal to the aggregate amount of the receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, *and from the sale of petroleum products under section 161(h).*

* * * * * * *

(d) The Account, the deposits and withdrawals from the Account, and the transactions, receipts, obligations, outlays associated with such deposits and withdrawals (including petroleum product purchases and related transactions), and receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, *and from the sale of petroleum products under section 161(h).*

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PART C—SUPPLEMENTARY OIL RESERVE

DECLARATION OF POLICY

SEC. 171. (a) The Congress finds that budgetary constraints have hindered completion of a one billion barrel Strategic Petroleum Reserve, and that establishment of a Supplementary Oil Reserve can help diminish the vulnerability of the United States to the effects of

a severe energy supply interruption, and contribute to the effectiveness of the international energy program.

(b)(1) It is hereby declared to be the policy of the United States, to the extent consistent with the Strategic Petroleum Reserve program, to encourage supplementation of the Strategic Petroleum Reserve and other domestic petroleum product stocks by contracting for Supplementary Oil Reserve storage of petroleum products in, or readily accessible to, the United States by private firms or foreign governments in facilities not owned by the United States, and by contracting for Supplementary Oil Reserve storage in Government-owned facilities.

(2) The purpose of this part is to add to the Secretary's existing authority under Part B to contract for petroleum products and storage and related facilities for the Strategic Petroleum Reserve by authorizing the Secretary to contract for Supplementary Oil Reserve storage in facilities other than those of the Strategic Petroleum Reserve, and for Supplementary Oil Reserve Storage, in otherwise unused Strategic Petroleum Reserve storage facilities, of petroleum products owned by any person or government.

(3) It is the policy of the United States that the authorities provided by this part shall be used as a complement to the Strategic Petroleum Reserve and not in any manner which reduces the effectiveness of, or diminishes the control of the President and the Secretary over, the drawdown or distribution of the Strategic Petroleum Reserve.

DEFINITIONS

SEC. 172. Terms used in this part have the same meaning that they have in Part B.

CONTRACTING FOR PETROLEUM PRODUCTS AND FACILITIES

SEC. 173. (a) The Secretary may contract for Supplementary Oil Reserve storage, in storage facilities other than those of the Strategic Petroleum Reserve, of petroleum products not owned by the United States.

(b) Petroleum products stored under such a contract are subject to the Secretary's authority under section 161 (except sections 161(e) and (g)) to draw down and distribute petroleum products, as if those petroleum products were in the Strategic Petroleum Reserve.

USE OF STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 174. (a) The Secretary may contract for Supplementary Oil Reserve storage, in otherwise unused Strategic Petroleum Reserve facilities, of petroleum products not owned by the United States, to the extent consistent with the purposes of Part B and of this part. A contract entered into under this section shall not limit the discretion of the President or the Secretary to conduct a drawdown and distribution of the Strategic Petroleum Reserve.

(b) Petroleum products stored under any such contract are subject to the authority of the Secretary under section 161 (except sections 161(e) and (g)) to draw down and distribute petroleum products, as if those petroleum products were in the Strategic Petroleum Reserve.

(c) The Secretary may store petroleum products under this section with or without charge, or pay a fee for their storage.

STRATEGIC PETROLEUM RESERVE TIE-IN

SEC. 175. (a) If the Secretary determines that one or more contracts or proposed contracts for Supplementary Oil Reserve storage of petroleum products under section 173 or 174 would for their duration achieve benefits comparable to equivalent storage of petroleum products in the Strategic Petroleum Reserve and that, because of budgetary constraints, equivalent storage of petroleum products in the Strategic Petroleum Reserve cannot be accomplished, the Secretary may so notify each House of the Congress, including in his notification the same information required under section 154(e) with regard to storage and related facilities proposed to be included, or petroleum products proposed to be stored, in the Strategic Petroleum Reserve. From sixty calendar days after notification, all petroleum products actually stored under such a contract shall be counted as part of the Strategic Petroleum Reserve for purposes of Part B.

(b) Petroleum products counted as part of the Strategic Petroleum Reserve under this section, if otherwise eligible, qualify to satisfy any applicable provisions for Regional Petroleum Reserves or noncontinuous storage under Part B.

(c) Notwithstanding any other law, the expiration of a contract for the storage of petroleum products under section 173 or 174 is not a violation of any requirement concerning the size or rate of fill of the Strategic Petroleum Reserve. For purposes of section 160(d), the reduction in the quantity of crude oil in storage in the Strategic Petroleum Reserve attributable to expiration of such a contract is considered to occur between the end of the fiscal year in which expiration actually occurs and the beginning of the following fiscal year.

IMPLEMENTATION

SEC. 176. (a) Notwithstanding subsection 160(c), the Secretary may use, for the acquisition of petroleum products or of petroleum product storage under this Part, without further appropriation, funds available for the planning, administration, acquisition, and construction of storage and related facilities, of the Strategic Petroleum Reserve, and funds available for the acquisition, transportation, and injection of petroleum products into the Strategic Petroleum Reserve. For the purposes of this section, the acquisition of petroleum products includes payments of amounts due upon the expiration, termination or other conclusion of the acquisition contract.

(b) The Secretary, in any contract entered into under this part, may provide for the acquisition by purchase or exchange of stored petroleum products by the United States, for storage in, or use in connection with, a drawdown and distribution of petroleum products from the Strategic Petroleum Reserve.

(c) An amendment of the Strategic Petroleum Reserve Plan is not required for any taken under this part.

(d) Petroleum products stored and facilities used in the Supplementary Oil Reserve have the same status as petroleum products and facilities owned by the United States for all purposes associated

with the exercise of the laws of any State or political subdivision thereof.

(e) Contracts under this part may be of such duration as the Secretary considers necessary or appropriate.

(f) For purposes of any law or regulation affecting the solicitation, negotiation, execution or performance of contracts, contractual action pursuant to this Part need not comply with applicable laws and regulations (other than those directly relating to safety, health or the environment) governing the construction of facilities, or the acquisition or provision of services or property.

(g) Upon the expiration, termination or other conclusion of a contract with a foreign government or agency thereof entered into under section 173 or 174, the President, notwithstanding any other law, may permit export of crude oil which has been stored pursuant to such contract.

(h) The Secretary may agree to binding arbitration of disputes under any contract, including a contract with a foreign government or agency thereof, entered into pursuant to section 173 or 174.

(i) Section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply to a bill submitted by the President in implementation of an international agreement or other agreement negotiated in fulfillment of this Part, as if the international agreement or other agreement were an agreement approved under section 2(a) of that Act when the President determines that it is necessary or appropriate to amend, repeal or enact a statute of the United States to implement a requirement of, or amendment to, the international agreement or other agreement.

PART [C]*D*—EXPIRATION

EXPIRATION

SEC. [171] *181.* Except as otherwise provided in title I, all authority under any provision of title I (other than a provision of such title amending another law) and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, [August 15, 1990] *September 30, 1993,* but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, [August 15, 1990] *September 30, 1993.*

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TITLE II—STANDBY AUTHORITIES

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EXPIRATION

SEC. 281. Except as otherwise provided in this subchapter, all authority, under any provision of this subchapter and rule, regulation, or order issued pursuant to such authority, shall expire at midnight, [August 15, 1990] *September 30, 1993;* but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date; nor any action or proceeding based upon any act committed prior to midnight, [August 15, 1990] *September 30, 1993.*

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